

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BEKAH DU BOIS,
Plaintiff,
v.

ANTHONY BOSKOVICH, et al.,
Defendants.

Case No. [21-cv-03224-HSG](#)

**ORDER GRANTING IN PART AND
DENYING IN PART MOTION FOR
ATTORNEYS' FEES**

Re: Dkt. No. 62

Pending before the Court is Defendant Anthony Boskovich's motion for attorneys' fees. Dkt. No. 62. The Court finds this matter appropriate for disposition without oral argument and the matter is deemed submitted. *See* Civil L.R. 7-1(b). For the reasons detailed below, the Court **GRANTS IN PART** and **DENIES IN PART** the motion.

In February 2023, the Court granted Defendant's motion to strike under California's anti-SLAPP statute. Dkt. No. 60 at 2–8. As the prevailing party, Defendant now moves for attorneys' fees under Cal. Civ. Proc. Code § 425.16(c)(1). In her opposition brief, Plaintiff Bekah DuBois indicates that she lacks the ability to pay any amount of attorneys' fees. *See* Dkt. No. 65 at 2. But the award of attorneys' fees to a prevailing defendant in an anti-SLAPP motion is mandatory. Cal. Civ. Proc. Code § 425.16(c)(1); *Ketchum v. Moses*, 24 Cal. 4th 1122, 1131 (Cal. 2001) (“[A]ny SLAPP defendant who brings a successful motion to strike is entitled to mandatory attorney fees.”). Plaintiff does not cite—and the Court is unaware of—any authority giving the Court discretion to consider her ability to pay in awarding fees under the anti-SLAPP statute. *Cf. Khai v. Cnty. of Los Angeles*, 730 F. App'x 408, 411, & n.2 (9th Cir. 2018) (“[The plaintiff] did not ask the court to consider his ability to pay, nor is it clear that the court would be permitted to do so where, as here, the grant of fees was mandatory.”).

Rather, the Court considers whether the requested fees are reasonable. Courts typically employ the “lodestar method” to calculate an appropriate award of attorneys’ fees. *See Ketchum*, 24 Cal. 4th at 1131–32. The lodestar figure is calculated by multiplying the number of hours the prevailing party reasonably expended by a reasonable hourly rate. *Id.* at 1133. This figure can be adjusted based on factors such as “the novelty and difficulty of the questions involved” and “the skill displayed in presenting them.” *Id.* at 1132. The lodestar should only include fees incurred in connection with the anti-SLAPP motion itself, and not for the entire action. *See Wanland v. L. Offs. of Mastagni, Holstedt & Chiurazzi*, 141 Cal. App. 4th 15, 21 (Cal. Ct. App. 2006); *see also Ketchum*, 24 Cal. 4th at 1141 (“[A]n award of fees may include not only the fees incurred with respect to the underlying claim, but also the fees incurred in enforcing the right to mandatory fees under Code of Civil Procedure section 425.16.”).

In this case, Defendant was represented by law firm Rankin, Shuey, Ranucci, Mintz, Lampasona & Reynolds. As relevant to the request for fees, attorney Damon Thurston spent 28 hours researching and drafting the anti-SLAPP motion; 3.8 hours preparing the motion for attorneys’ fees; and anticipated spending approximately 2.5 additional hours reviewing and responding to the opposition, for a total of 34.3 hours. *See* Dkt. No. 62-1 (“Thurston Decl.”) at ¶¶ 3–4. Rather than provide the actual billing records for this case, Mr. Thurston provided in his declaration a summary table of the time he spent on various tasks related to the anti-SLAPP motion in this case. *See id.* He also cites the *Laffey* Matrix, a table of attorney fee hourly rates used in the District of Columbia. *Id.* at ¶¶ 6–8. When adjusted for the San Francisco Bay Area, Mr. Thurston contends that the matrix results in an hourly rate of over \$990 for an attorney of his experience level. *See id.* Nevertheless, Mr. Thurston concludes that a reasonable hourly rate for his time in this case based on his twenty-five years of experience is \$450 an hour. *See id.* Thus, in his motion for attorneys’ fees Defendant requests an award of \$15,435 in fees.¹

Plaintiff responds that Defendant did not actually have to pay any fees associated with this case because they were covered by his malpractice insurance. *See* Dkt. No. 65 at 2–3. Plaintiff

¹ 34.3 hours x \$450 = \$15,435.

1 further notes that Mr. Thurston actually billed at only \$200 an hour, less than half of the requested
 2 hourly fee. *See id.* In support, Plaintiff attaches several “courtesy copies” of invoices that she
 3 received from Rankin, Shuey, Ranucci, Mintz, Lampasona & Reynolds for work incurred
 4 litigating this case. *See* Dkt. No. 64-2, Ex. A; Dkt. No. 65-4, Ex. C. In short, Plaintiff suggests
 5 that the Court should not award fees above the hourly rate Mr. Thurston actually billed in this
 6 case.

7 Yet courts have routinely rejected this idea. As the California Court of Appeal has
 8 explained:

9
 10 There is no requirement that the reasonable market rate mirror the
 11 *actual* rate billed . . . “The reasonable market value of the attorney’s
 12 services is the measure of a reasonable hourly rate. This standard
 13 applies regardless of whether the attorneys claiming fees charge
 nothing for their services, charge at below-market or discounted rates,
 represent the client on a straight contingent fee basis, or are in-house
 counsel.”


14 *Syers Properties III, Inc. v. Rankin*, 226 Cal. App. 4th 691, 701 (Cal. Ct. App. 2014) (quoting
 15 *Chacon v. Litke*, 181 Cal. App. 4th 1234, 1260 (Cal. Ct. App. 2010)) (emphasis in original); *see*
 16 *also Pasternack v. McCullough*, 65 Cal. App. 5th 1050, 1057–58 (Cal. Ct. App. 2021) (rejecting
 17 argument that lodestar must be calculated based on rate insurer actually paid). The determination
 18 of reasonable fees is generally within the trial court’s sound discretion. *See Syers Properties III*,
 19 226 Cal. App. 4th at 702–03.

20 Having reviewed the record in detail, the Court finds that the hours incurred by counsel are
 21 reasonable. The motion for attorneys’ fees only seeks recovery for those hours spent preparing the
 22 anti-SLAPP motion and related motion for attorneys’ fees. The Court further finds that counsel
 23 appeared to work efficiently, spending only 34.3 hours researching and drafting two substantive
 24 motions. However, the Court disagrees that \$450 is a reasonable rate given the circumstances of
 25 this case. Defendant does not appear to dispute that he actually billed only \$200 an hour in this
 26 case. *See* Dkt. No. 66 at 2. And although, as explained above, the reasonable market rate does not
 27 have to match counsel’s actual billed rate, Defendant still bears the burden of supporting his
 28 requested rate. But aside from counsel’s own *ipse dixit*, Defendant does not provide any evidence

to support his assertion that \$450 an hour is a reasonable rate for the work performed in this case. Defendant cites but then disregards the *Laffey* Matrix. And in any event, the matrix itself offers no adjustments for the context or complexity of the case. This case presented a straightforward application of the anti-SLAPP statute. As the Court explained in its prior order, the complaint itself alleged that Defendant's misconduct occurred as part of his legal work representing Plaintiff's ex-husband in a family court case. *See* Dkt. No. 60. Defendant has not proffered any support for his contention that a reasonable consumer of legal services would pay \$450 an hour for such a routine motion, and the Court does not find this credible. Based on the nature of this case and the arguments presented, the Court finds that a reasonable rate for the work incurred is \$200 an hour. In its discretion, the Court therefore **GRANTS IN PART** and **DENIES IN PART** the motion for attorneys' fees, awarding fees for Defendant in the amount of \$6,860.²

IT IS SO ORDERED.

Dated: 5/24/2023


HAYWOOD S. GILLIAM, JR.
United States District Judge

² 34.3 hours x \$200 = \$6,860.